UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TEASIA MARTIN,

Plaintiff,

-against-

WALGREEN CO., DUANE READE INC.,
ALAMGIR KABIR, *Individually*,
MICHAEL GEYER, *Individually*,
VIVIAN GHOBRIAL, *Individually*, and
MIKE CONWAY, *Individually*,

Defendants.

--X

Case No.

COMPLAINT

PLAINTIFF DEMANDS A TRIAL BY JURY

Plaintiff, TEASIA MARTIN, by her attorneys, PHILLIPS & ASSOCIATES, Attorneys at Law, PLLC, hereby complains of the Defendants, upon information and belief, as follows:

NATURE OF THE CASE

1. Plaintiff complains pursuant to Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166 ("Title VII"), and the New York City Human Rights Law, New York City Administrative Code §8-502(a), *et. seq.* ("NYCHRL"), and seeks damages to redress the injuries Plaintiff has suffered as a result of being **Discriminated Against** on the basis of her **Race (African-American/Black)** and **National Origin (American)** and **Retaliated Against** by her employer solely for complaining of discrimination.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is proper under 42 U.S.C. §2000e-5(f)(3), and 28 U.S.C.

§§1331 and 1343.

3. The Court has supplemental jurisdiction over the claims of Plaintiff brought under state law pursuant to 28 U.S.C. §1367.

4. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §1391(b), as the acts complained of occurred therein.

PROCEDURAL PREREQUISITES

5. Plaintiff filed charges of discrimination upon which this Complaint is based with the Equal Employment Opportunities Commission ("EEOC").

6. Plaintiff received a Notice of Right to Sue from the EEOC, dated November 30, 2016, with respect to the herein charges of discrimination. A copy of the Notice is annexed hereto.

7. This Action is being commenced within ninety (90) days of receipt of said Right to Sue.

PARTIES

8. That at all times relevant hereto, Plaintiff TEASIA MARTIN ("MARTIN") was a resident of the State of New York and the County of Kings.

9. That at all times relevant hereto, Defendant WALGREEN CO. ("WALGREEN") was a foreign business corporation, duly existing pursuant to, and by virtue of, the laws of the State of New York, with its principal place of business located at 108 Wilmot Road, Deerfield, Illinois 60015.

10. That at all times relevant hereto, Defendant DUANE READE INC. ("DUANE READE") was a foreign limited liability company, duly existing pursuant to, and by virtue of, the laws of the State of New York, with its principal place of business located at 108 Wilmot

Road, Deerfield, Illinois 60015.

11. That at all times relevant hereto, upon information and belief, Defendant WALGREEN and Defendant DUANE READE are "integrated employers," as they have common management, share financial control of both companies, share centralized control of labor relations, and share employees.

12. That at all times relevant hereto, Plaintiff MARTIN was an employee of Defendant WALGREEN and Defendant DUANE READE.

13. That at all times relevant hereto, Defendant ALAMGIR KABIR ("KABIR") was an employee of Defendant WALGREEN and Defendant DUANE READE, holding the position of "Store Manager."

14. That at all times relevant hereto, Defendant KABIR was Plaintiff MARTIN's supervisor and had supervisory authority over Plaintiff MARTIN.

15. That at all times relevant hereto, Defendant MICHAEL GEYER ("GEYER") was an employee of Defendant WALGREEN and Defendant DUANE READE, holding the position of "Human Resources Manager."

16. That at all times relevant hereto, Defendant GEYER was Plaintiff MARTIN's supervisor and had supervisory authority over Plaintiff MARTIN.

17. That at all times relevant hereto, Defendant VIVIAN GHOBRIAL ("GHOBRIAL") was an employee of Defendant WALGREEN and Defendant DUANE READE, holding the position of "Human Resources Representative."

18. That at all times relevant hereto, Defendant GHOBRIAL was Plaintiff MARTIN's supervisor and had supervisory authority over Plaintiff MARTIN.

19. That at all times relevant hereto, Defendant MIKE CONWAY ("CONWAY") was an

employee of Defendant WALGREEN and Defendant DUANE READE, holding the position of "District Manager of Pharmacy & Retail Operations."

20. That at all times relevant hereto, Defendant CONWAY was Plaintiff MARTIN's supervisor and had supervisory authority over Plaintiff MARTIN.

21. That at all times relevant hereto, Defendant WALGREEN, Defendant DUANE READE, Defendant KABIR, Defendant GEYER, Defendant GHOBRIAL, and Defendant CONWAY are collectively referred to herein as "Defendants."

MATERIAL FACTS

22. In or around July 2007, Plaintiff MARTIN began working for Defendants as a "Stockperson/Service Clerk" at Defendants' Duane Reade store, located at 385 Fifth Avenue, New York, New York 10001 ("385 Fifth Avenue location"), earning approximately $7.15 per hour.

23. Throughout Plaintiff MARTIN's employment with Defendants, Plaintiff MARTIN was an exemplary employee, was never disciplined, and always received compliments for her work performance.

24. In fact, in or around 2014, as a result of Plaintiff MARTIN's excellent work performance, Defendants promoted Plaintiff MARTIN to the position of "Head Cashier."

25. In addition, throughout Plaintiff MARTIN's tenure, she also received numerous raises in pay, ultimately earning approximately $9.10 per hour.

26. However, in or around May 2015, everything changed when Plaintiff MARTIN's East Indian coworkers, including but not limited to, Babul Sakar, Dilruba Kbanam, and Chanmatie Rampersaud, began to constantly harass Plaintiff MARTIN by holding their noses with two fingers whenever she walked by them, suggesting that Plaintiff MARTIN

smells. Each time this would occur, everyone who was present, including Defendant KABIR, would then all begin to laugh.

27. In or around June 2015, Plaintiff MARTIN complained to Defendant KABIR about the harassment and asked him to make it stop, to which he responded, "If you are not telling the truth, you will be suspended for lying." This was when Plaintiff MARTIN began to realize that the reason Defendants were permitting the harassment to occur was due to her race and national origin, as all of the harassers as well as Defendant KABIR were Asian of East Indian national origin and Plaintiff MARTIN was not.

28. In or around early-July 2015, Plaintiff MARTIN complained to Defendant GEYER and Defendant GHOBRIAL that her East Indian coworkers were harassing her and discriminating against her. Specifically, she complained that Dilruba Kbanam and Chanmatie Rampersaud would hold their noses when Plaintiff MARTIN was in or near their presence and that they, along with Defendant KABIR, would whisper and laugh behind her back. Unfortunately, neither Defendant GEYER nor Defendant GHOBRIAL took any action in response, and as a result, Plaintiff MARTIN's East Indian coworkers continued to harass Plaintiff MARTIN.

29. Additionally, almost immediately after she complained to Defendant GEYER, Defendant KABIR began to retaliate against Plaintiff MARTIN by micromanaging her work duties and threatening her job.

30. As such, on or about July 27, 2015, Plaintiff MARTIN sent a letter to Defendant CONWAY, in which she complained that her coworkers, Dilruba Kbanam and Chanmatie Rampersaud, were still harassing her due to her national origin and race, including but not limited to, calling her a "monkey." Plaintiff MARTIN also stated that

she "noticed when their (sic) were other Indian people present they would hold their nose." In the same letter, Plaintiff MARTIN also complained that her supervisor, Defendant KABIR, had been retaliating against her for complaining to Defendant GEYER and Defendant GHOBRIAL.

31. Shockingly, in response, Defendant CONWAY told Plaintiff MARTIN that, "it is not a big matter and should be handled at the store level." This was rather disturbing to Plaintiff MARTIN, as Defendant CONWAY was essentially telling her to have it handled by the store manager, Defendant KABIR, the same person about whom Plaintiff MARTIN was complaining. As a result, the discriminatory harassment and retaliation were allowed to continue.

32. Approximately three (3) months later, on or about Tuesday, October 27, 2015, Dilruba Kbanam suddenly started yelling at Plaintiff MARTIN, threatened to slap Plaintiff MARTIN, called her names such as "black dog" and "prostitute," and stated that Plaintiff MARTIN sells her body for $100. In response, Plaintiff MARTIN told Dilruba Kbanam that she was offended and demanded that she not speak to her in such a manner. This entire altercation was captured on Defendants' surveillance video.

33. Later that same day, Plaintiff MARTIN observed police officers in the store and saw Defendant KABIR ask an officer to arrest Plaintiff MARTIN for engaging in the altercation with Dilruba Kbanam, to which the officer refused because "it had only been a verbal altercation." However, Defendant KABIR proceeded to insist to the officers that Plaintiff MARTIN be arrested, causing Plaintiff MARTIN much distress and humiliation.

34. It also became immediately apparent to Plaintiff MARTIN that Defendant KABIR was going to do everything in his power to end Plaintiff MARTIN's employment simply

because she was African-American/Black and not East Indian and had complained of discrimination.

35. On or about Monday, November 2, 2015, Defendants suspended both Plaintiff MARTIN and Dilruba Kbanam due to the October 27, 2015 altercation.

36. Only hours later, also on or about November 2, 2015, Plaintiff MARTIN submitted another letter to Defendants' Human Resources Department in which she complained of the suspension as well as the discrimination and disparate treatment to which she was being subjected.

37. The following day, on or about November 3, 2015, Plaintiff MARTIN filed a complaint with the New York State Department of Labor, and cc'd Defendants' Human Resources Department, Defendants' Corporate Office, and Defendant CONWAY, in which she stated that, "I truly believe that my ethnicity had a great deal to do with the treatment of me by my mostly East Indian fellow employees and management. I was called a 'Black Dog' and a 'prostitute.' My (so called) colleagues poked fun at me and ridiculed me for months while my managers and supervisors did nothing and often joined in on the abuse." While Plaintiff MARTIN was hoping that this complaint would finally put an end to the unrelenting discrimination and harassment, she never expected Defendants to retaliate against her further and terminate her employment. However, this is exactly what occurred.

38. On or about November 23, 2015, without any warning, Defendants suddenly terminated Plaintiff MARTIN's employment because with respect to the October 27, 2015 altercation, "you were the aggressor and your actions were both threatening and inappropriate."

39. Shockingly, while Defendants terminated Plaintiff MARTIN's employment, Defendants only issued Dilruba Kbanam, who is East Indian, a "warning" and allowed her to return to work.

40. The reason for Plaintiff MARTIN's termination was clearly **pretextual**, as Defendants' surveillance video does not show that Plaintiff MARTIN was the aggressor in the altercation with Dilruba Kbanam, who was not terminated. In fact, the video footage suggests that both Plaintiff MARTIN and Dilruba Kbanam were aggressive, hostile and pointed their fingers at each other.

41. Accordingly, based upon the aforementioned suspicious actions, it is clear that Defendants terminated Plaintiff MARTIN's employment due to her race and national origin, as well as in retaliation for complaining of discrimination, as Defendants did not terminate the employment of her East Indian co-worker, Dilruba Kbanam, who engaged in the same behavior as Plaintiff MARTIN. The only difference between Plaintiff MARTIN and Dilruba Kbanam is that Plaintiff MARTIN is Black/African-American and complained of discrimination, while Dilruba Kbanam is East Indian and never complained of discrimination.

42. In fact, since in or around November 2014, when Defendant KABIR became Manager of Defendants' 385 Fifth Avenue location, the store employees have been overwhelmingly Asian of East Indian national origin. Upon information and belief, of the fifty-six (56) employees assigned to the 385 Fifth Avenue location during the year 2015, thirty-seven (37) were of Asian/East-Indian descent, thirteen (13) were African-American/Black, three (3) were Hispanic, one (1) was Caucasian, and the race of two (2) was unknown.

43. This termination was also especially suspect because Plaintiff MARTIN was the person

who was complaining that she was the victim of discrimination, and she was also the one who was terminated under suspicious circumstances soon after complaining of discrimination.

44. Plaintiff MARTIN feels offended, disturbed, and humiliated by this blatantly discriminatory and retaliatory termination.

45. Plaintiff MARTIN was retaliated against due to her objections to Defendants' discriminatory and unlawful conduct.

46. The above are just some of the acts of harassment, discrimination and retaliation that Plaintiff MARTIN experienced on a regular and continual basis while employed by Defendants.

47. But for the fact that Plaintiff MARTIN is African-American/Black and had complained about Defendants' discrimination and harassment, Defendants would not have terminated her employment.

48. Defendants' actions and conduct were intentional and intended to harm Plaintiff MARTIN.

49. Plaintiff MARTIN has been unlawfully discriminated against, retaliated against, humiliated, degraded and belittled, and as a result, suffers loss of rights, emotional distress, loss of income, earnings and physical injury.

50. Plaintiff MARTIN's performance was, upon information and belief, above average during the course of her employment with Defendants.

51. As a result of Defendants' actions, Plaintiff MARTIN feels extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed.

52. As a result of the acts and conduct complained of herein, Plaintiff MARTIN has suffered

a loss of income, the loss of a salary, bonus, benefits, and other compensation which such employment entails, and Plaintiff MARTIN has also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

53. Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law. As such, Plaintiff MARTIN demands Punitive Damages as against all Defendants, jointly and severally.

AS A FIRST CAUSE OF ACTION
FOR DISCRIMINATION UNDER TITLE VII
(Not Against Individual Defendants)

54. Plaintiff MARTIN repeats and realleges each and every allegation made in the above paragraphs of this complaint.

55. This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section(s) 2000e *et seq.*, for relief based upon the unlawful employment practices of the above-named Defendants. Plaintiff MARTIN complains of Defendants' violation of Title VII's prohibition against discrimination in employment based, in whole or in part, upon an employee's race and national origin.

56. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e *et seq.*, by discriminating against Plaintiff MARTIN because of her race and national origin.

AS A SECOND CAUSE OF ACTION
FOR RETALIATION UNDER TITLE VII
(Not Against Individual Defendants)

57. Plaintiff MARTIN repeats and realleges each and every allegation made in the above paragraphs of this complaint.

58. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-3(a) provides that it shall be unlawful employment practice for an employer: "(1) to . . . discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter."

59. Defendants engaged in unlawful employment practice prohibited by 42 U.S.C. §2000e *et seq*. by discriminating against Plaintiff MARTIN with respect to the terms, conditions or privileges of employment because of her opposition to the unlawful employment practices of Defendants.

AS A THIRD CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE

60. Plaintiff MARTIN repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

61. The New York City Administrative Code §8-107(1) provides that "It shall be an unlawful discriminatory practice: (a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment."

62. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code §8-107(1)(a) by discriminating against Plaintiff MARTIN because

of her race and national origin.

AS A FOURTH CAUSE OF ACTION FOR RETALIATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE

63. Plaintiff MARTIN repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

64. The New York City Administrative Code §8-107(7) provides that it shall be unlawful discriminatory practice: "For an employer . . . to discriminate against any person because such person has opposed any practices forbidden under this chapter. . ."

65. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code §8-107(7) by discriminating against Plaintiff MARTIN because of Plaintiff MARTIN's opposition to the unlawful employment practices of Plaintiff MARTIN's employer.

AS A FIFTH CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE

66. Plaintiff MARTIN repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

67. The New York City Administrative Code §8-107(6) provides that it shall be unlawful discriminatory practice: "For any person to aid, abet, incite, compel; or coerce the doing of any of the acts forbidden under this chapter, or attempt to do so."

68. Individual Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code §8-107(6) by aiding, abetting, inciting, compelling and coercing the above discriminatory and retaliatory conduct.

AS AN SIXTH CAUSE OF ACTION FOR DISCRIMINATION

UNDER THE NEW YORK CITY ADMINISTRATIVE CODE

69. Plaintiff MARTIN repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

70. The New York City Administrative Code §8-107(13) Employer liability for discriminatory conduct by employee, agent or independent contractor.

a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.

b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:

1. the employee or agent exercised managerial or supervisory responsibility; or

2. the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

3. the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

c. An employer shall be liable for an unlawful discriminatory practice committed by a person employed as an independent contractor, other than an agent of such employer, to carry out work in furtherance of the employer's business enterprise only where such discriminatory conduct was committed in the course of such employment and the employer had actual knowledge of and acquiesced in such conduct.

71. Defendants violated the section cited herein as set forth.

JURY DEMAND

72. Plaintiff MARTIN requests a jury trial on all issues to be tried.

WHEREFORE, Plaintiff MARTIN respectfully requests a judgment against Defendants:

A. Declaring that Defendants engaged in unlawful employment practices prohibited by Title VII, the NYCHRL, in that Defendants discriminated against Plaintiff MARTIN on the basis of her race and national origin and retaliated against Plaintiff MARTIN for complaining of discrimination;

B. Awarding damages to Plaintiff MARTIN for all lost wages and benefits resulting from Defendants' unlawful discrimination and retaliation and to otherwise make her whole for any losses suffered as a result of such unlawful employment practices;

C. Awarding Plaintiff MARTIN compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to her reputation in an amount to be proven;

D. Awarding Plaintiff MARTIN punitive damages;

E. Awarding Plaintiff MARTIN attorneys' fees, costs, and expenses incurred in the prosecution of the action; and

F. Awarding Plaintiff MARTIN such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful employment practices.

Dated: New York, New York
October 10, 2016

PHILLIPS & ASSOCIATES,
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